

[Code of Federal Regulations]
[Title 42, Volume 1]
[Revised as of October 1, 2002]
From the U.S. Government Printing Office via GPO Access
[CITE: 42CFR8.11]

TITLE 42--PUBLIC HEALTH

CHAPTER I--PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 8--CERTIFICATION OF OPIOID TREATMENT PROGRAMS--Table of Contents

Subpart B--Certification and Treatment Standards

Sec. 8.11 Opioid treatment program certification.

(a) General. (1) An OTP must be the subject of a current, valid certification from SAMHSA to be considered qualified by the Secretary under section 303(g)(1) of the Controlled Substances Act (21 U.S.C. 823(g)(1)) to dispense opioid drugs in the treatment of opioid addiction. An OTP must be determined to be qualified under section 303(g)(1) of the Controlled Substances Act, and must be determined to be qualified by the Attorney General under section 303(g)(1), to be registered by the Attorney General to dispense opioid agonist treatment medications to individuals for treatment of opioid addiction.

(2) To obtain certification from SAMHSA, an OTP must meet the Federal opioid treatment standards in Sec. 8.12, must be the subject of a current, valid accreditation by an accreditation body or other entity designated by SAMHSA, and must comply with any other conditions for certification established by SAMHSA.

(3) Certification shall be granted for a term not to exceed 3 years, except that certification may be extended during the third year if an application for accreditation is pending.

(b) Application for certification. Three copies of an application for certification must be submitted by the OTP to the address identified in Sec. 8.3(b). SAMHSA will consider and accept the electronic submission of these materials when electronic submission systems are developed and available. The application for certification shall include:

- (1) A description of the current accreditation status of the OTP;
- (2) A description of the organizational structure of the OTP;
- (3) The names of the persons responsible for the OTP;
- (4) The addresses of the OTP and of each medication unit or other facility under the control of the OTP;
- (5) The sources of funding for the OTP and the name and address of each governmental entity that provides such funding; and
- (6) A statement that the OTP will comply with the conditions of certification set forth in paragraph (f) of this section.
- (7) The application shall be signed by the program sponsor who shall certify that the information submitted in the application is truthful and accurate.

(c) Action on application. (1) Following SAMHSA's receipt of an application for certification of an OTP, and after consultation with the appropriate State authority regarding the qualifications of the applicant, SAMHSA may grant the application for certification, or renew an existing certification, if SAMHSA determines that the OTP has satisfied the requirements for certification or renewal of certification.

(2) SAMHSA may deny the application if SAMHSA determines that:

- (i) The application for certification is deficient in any respect;
- (ii) The OTP will not be operated in accordance with the Federal opioid treatment standards established under Sec. 8.12;
- (iii) The OTP will not permit an inspection or a survey to proceed, or will not permit in a timely manner access to relevant records or information; or
- (iv) The OTP has made misrepresentations in obtaining accreditation or in applying for certification.

(3) Within 5 days after it reaches a final determination that an OTP meets the requirements for certification, SAMHSA will notify the Drug Enforcement Administration (DEA) that the OTP has been determined to be qualified to provide opioid treatment under section 303(g)(1) of the Controlled Substances Act.

(d) Transitional certification. OTPs that before May 18, 2001 were the subject of a current, valid approval by FDA under 21 CFR, part 291 (contained in the 21 CFR parts 200 to 299 edition, revised as of July 1, 2000), are deemed to be the subject of a current valid certification for purposes of paragraph (a)(11) of this section. Such "transitional certification" will expire on August 17, 2001 unless the OTP submits the information required by paragraph (b) of this section to SAMHSA on or before August 17, 2001. In addition to this application, OTPs must certify with a written statement signed by the program sponsor, that they will apply for accreditation within 90 days of the date SAMHSA approves the second accreditation body. Transitional certification, in that case, will expire on May 19, 2003. SAMHSA may extend the transitional certification of an OTP for up to one additional year provided the OTP demonstrates that it has applied for accreditation, that an accreditation survey has taken place or is scheduled to take place, and that an accreditation decision is expected within a reasonable period of time (e.g., within 90 days from the date of survey). Transitional certification under this section may be suspended or revoked in accordance with Sec. 8.14.

(e) Provisional certification. (1) OTPs that have no current certification from SAMHSA, but have applied for accreditation with an accreditation body, are eligible to receive a provisional certification for up to 1 year. To receive a provisional certification, an OTP shall submit the information required by paragraph (b) of this section to SAMHSA along with a statement identifying the accreditation body to which the OTP has applied for accreditation, the date on which the OTP applied for accreditation, the dates of any accreditation surveys that have taken place or are expected to take place, and the expected schedule for completing the accreditation process. A provisional certification for up to 1 year will be granted, following receipt of the information described in this paragraph, unless SAMHSA determines that patient health would be adversely affected by the granting of provisional certification.

(2) An extension of provisional certification may be granted in extraordinary circumstances or otherwise to protect public health. To apply for a 90-day extension of provisional certification, an OTP shall submit to SAMHSA a statement explaining its efforts to obtain accreditation and a schedule for obtaining accreditation as expeditiously as possible.

(f) Conditions for certification. (1) OTPs shall comply with all pertinent State laws and regulations. Nothing in this part is intended to limit the authority of State and, as appropriate, local governmental entities to regulate the use of opioid drugs in the treatment of opioid addiction. The provisions of this section requiring compliance with requirements imposed by State law, or the submission of applications or reports required by the State authority, do not apply to OTPs operated directly by the Department of Veterans Affairs, the Indian

Health Service, or any other department or agency of the United States. Federal agencies operating OTPs have agreed to cooperate voluntarily with State agencies by granting permission on an informal basis for designated State representatives to visit Federal OTPs and by furnishing a copy of Federal reports to the State authority, including the reports required under this section.

(2) OTPs shall allow, in accordance with Federal controlled substances laws and Federal confidentiality laws, inspections and surveys by duly authorized employees of SAMHSA, by accreditation bodies, by the DEA, and by authorized employees of any relevant State or Federal governmental authority.

(3) Disclosure of patient records maintained by an OTP is governed by the provisions of 42 CFR part 2, and every program must comply with that part. Records on the receipt, storage, and distribution of opioid agonist treatment medications are also subject to inspection under Federal controlled substances laws and under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.). Federally-sponsored treatment programs are subject to applicable Federal confidentiality statutes.

(4) A treatment program or medication unit or any part thereof, including any facility or any individual, shall permit a duly authorized employee of SAMHSA to have access to and to copy all records on the use of opioid drugs in accordance with the provisions of 42 CFR part 2.

(5) OTPs shall notify SAMHSA within 3 weeks of any replacement or other change in the status of the program sponsor or medical director.

(6) OTPs shall comply with all regulations enforced by the DEA under 21 CFR chapter II, and must be registered by the DEA before administering or dispensing opioid agonist treatment medications.

(7) OTPs must operate in accordance with Federal opioid treatment standards and approved accreditation elements.

(g) Conditions for interim maintenance treatment program approval.

(1) Before a public or nonprofit private OTP may provide interim maintenance treatment, the program must receive the approval of both SAMHSA and the chief public health officer of the State in which the OTP operates.

(2) Before SAMHSA may grant such approval, the OTP must provide SAMHSA with documentation from the chief public health officer of the State in which the OTP operates demonstrating that:

(i) Such officer does not object to the providing of interim maintenance treatment in the State;

(ii) The OTP seeking to provide such treatment is unable to place patients in a public or nonprofit private comprehensive treatment program within a reasonable geographic area within 14 days of the time patients seek admission to such programs;

(iii) The authorization of the OTP to provide interim maintenance treatment will not otherwise reduce the capacity of comprehensive maintenance treatment programs in the State to admit individuals (relative to the date on which such officer so certifies); and

(iv) The State certifies that each individual enrolled in interim maintenance treatment will be transferred to a comprehensive maintenance treatment program no later than 120 days from the date on which each individual first requested treatment, as provided in section 1923 of the Public Health Service Act (21 U.S.C. 300x-23).

(3) SAMHSA will provide notice to the OTP denying or approving the request to provide interim maintenance treatment. The OTP shall not provide such treatment until it has received such notice from SAMHSA.

(h) Exemptions. An OTP may, at the time of application for certification or any time thereafter, request from SAMHSA exemption from the regulatory requirements set forth under this section and Sec. 8.12. An example of a case in which an exemption might be granted would be for a private practitioner who wishes to treat a limited number of patients in a non-metropolitan area with few physicians and no rehabilitative services

geographically accessible and requests exemption from some of the staffing and service standards. The OTP shall support the rationale for the exemption with thorough documentation, to be supplied in an appendix to the initial application for certification or in a separate submission. SAMHSA will approve or deny such exemptions at the time of application, or any time thereafter, if appropriate. SAMHSA shall consult with the appropriate State authority prior to taking action on an exemption request.

(i) Medication units, long-term care facilities and hospitals.

(1) Certified OTPs may establish medication units that are authorized to dispense opioid agonist treatment medications for observed ingestion. Before establishing a medication unit, a certified OTP must notify SAMHSA by submitting form SMA-162. The OTP must also comply with the provisions of 21 CFR part 1300 before establishing a medication unit. Medication units shall comply with all pertinent state laws and regulations.

(2) Certification as an OTP under this part will not be required for the maintenance or detoxification treatment of a patient who is admitted to a hospital or long-term care facility for the treatment of medical conditions other than opiate addiction and who requires maintenance or detoxification treatment during the period of his or her stay in that hospital or long-term care facility. The terms "hospital" and "long-term care facility" as used in this section are to have the meaning that is assigned under the law of the State in which the treatment is being provided. Nothing in this section is intended to relieve hospitals and long-term care facilities from the obligation to obtain registration from the Attorney General, as appropriate, under section 303(g) of the Controlled Substances Act.

[66 FR 4090, Jan. 17, 2001, as amended at 66 FR 15347, Mar. 19, 2001]